

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

JOHN A. FERRARA,

Defendant.

CASE NO. 8:04CR501

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) in this case and the Defendant’s motion for downward departure (Filing No. 45). The parties have not objected to the PSR. The government adopted the PSR. (Filing No. 43.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The motion for downward departure addresses the issue of over representation of the Defendant's criminal history, arguing that category I more fairly represents his criminal history as opposed to category II. The Court will hear the issue at sentencing.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the Presentence Investigation Report is correct in all respects;
2. The Defendant's motion for downward departure (Filing No. 45) will be heard at sentencing;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are

required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 15th day of September, 2005.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge